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Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Universal Service Contribution Methodology, WC Docket No. 06-122; Intercarrier Compensation for ISP-Bound Traffic, WC Docket No. 99-68; Petition of AT&T for Declaratory Ruling and Limited Waivers Regarding Access Charges and “ESP Exemption,” WC Docket No. 08-152; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

Dear Ms. Dortch:

Windstream is very concerned that the intercarrier compensation reforms under consideration will jeopardize mid-sized price cap carriers’ ability to continue providing affordable, quality broadband and voice services in rural areas. If they are forced to incur sizable losses in intercarrier compensation revenues, mid-sized price cap carriers will not be in a position to deploy new broadband services to their customers, let alone maintain the prices and quality of services currently offered to their customers today. These carriers’ communications services are critical for rural development and employment, public safety, modern health care, and education. Thus, adoption of this proposal could have a direct and significantly detrimental impact on rural customers’ lives and livelihoods. This impact on its own should raise serious concern for the Federal Communications Commission (“Commission”). When considered in light of the largest financial crisis in 75 years and during what appears to be a serious global recession, the intercarrier compensation reform proposal should be a non-starter as written.

Given these substantial concerns, Windstream requests that the Commission put its intercarrier compensation reform proposal out for comment. Alternatively, if the Commission believes it must take additional steps to address comprehensive intercarrier compensation reform now, the Commission should take a more measured approach by adopting together interrelated modifications to the plan, as suggested below.

I. Private Investment Is Needed to Support Voice and Broadband Services in Rural Areas.

To provide affordable, quality broadband and voice services to rural consumers, mid-sized carriers, like Windstream, rely on private investment. Private investors enable these carriers – among other items – to service debt, finance broadband deployment, and otherwise remain fiscally sound. Such investors look for stability in the mid-sized carrier’s financial position and outside influences, including the regulatory structure and economic environment.

The stability of a mid-sized carrier’s business model is particularly important to the type of investors it attracts. These investors – which include many public employee pension funds and insurance companies¹ – are drawn to mid-sized carriers due to their historic cash flows, ability to pay dividends regularly, and consistent levels of profitability.² Thus, any significantly negative change to the mid-sized carrier’s business model could trigger a mass exodus in private investment, which would impair these carriers’ ability to fulfill central public policy goals of the Communications Act. Mid-sized carriers would struggle to maintain “reasonably comparable rates” and “quality services,” and would have to curtail plans for further deployment of advanced services.³

If confidence in the viability of the mid-sized rural business model is undermined, it will be too late for the Commission to unring that bell. Investors will not wait around to see if the Commission comes to the rescue and how. To prevent this outcome, mid-sized carriers, if at all possible, will have no choice but to try to maintain their investors’ returns by raising prices, and decreasing spending on their networks and operations.⁴ And if these measures are not sufficient to retain private investment, the Commission will face a new challenge: finding new broadband and voice providers able to adequately serve high-cost rural areas.

¹ Many investment firms also hold Windstream stock on behalf of individual investors or in income-focused mutual funds.

² Dividend payments are central to the mid-sized carrier’s business model. A mid-sized carrier’s stock is similar to a bond. Stock prices of these carriers, which are facing declining revenues, typically do not appreciate. Instead, mid-sized carriers reward equity investors by paying regular dividends. Without these dividends, investors would have little reason to hold onto their stock. If investors decide to sell their stock because of concerns about their investment, a mid-sized carrier’s share price will decline, making it even more difficult for the carriers to obtain capital from the debt markets, which have been for all intents and purposes “closed” due to the extreme volatility in recent months.

³ See 47 U.S.C. § 254(b) (articulating principles serving as the basis for “policies for the preservation and advancement of universal service,” which include, but are not limited to, (i) consumers in “all regions of the Nation” should have access to telecommunications and information services at “reasonably comparable rates” and (ii) “quality services should be available at just, reasonable, and affordable rates”).

⁴ Most mid-sized carriers likely would decrease dividends or returns to shareholders only as a last resort, because this measure would be extremely harmful to their ability to maintain vital access to the capital markets.

II. The Reform Plan Grossly Underestimates the Negative Impact on Mid-sized Price Cap Carriers and the Customers They Serve.

Based on recent meetings with Commission staff, Windstream believes that the Commission has been grossly underestimating the negative impact that the reform proposal would have on mid-sized price cap carriers and the rural consumers they serve. Windstream estimates that the plan would cause it to lose hundreds of millions of dollars in revenues, with little or no ability to recover these substantial losses.

First, the Commission's proposal appears to rely on incorrect, unsubstantiated suggestions that eliminating intercarrier compensation will somehow enhance rural broadband deployment and a transition to all-IP voice.⁵ Nothing could be further from the truth. Windstream's broadband and Voice over Internet Protocol ("VoIP") investment decisions are dictated solely by an assessment of whether projected new revenues and operational savings will outweigh the associated, gargantuan costs. With respect to broadband in particular, Windstream previously has estimated that it would cost \$250 to \$400 million to deploy broadband to reach the approximately 15 percent of its customers who currently do not have access to its broadband.⁶ Windstream then would need to spend many millions more on ongoing broadband operating costs.⁷ To deploy VoIP, Windstream expects it would need to spend hundreds of millions above and beyond capital and operating expenses necessary to support ubiquitous broadband.⁸ It is unrealistic to think that a reduction in intercarrier compensation rates would change a mid-sized price cap carrier's decision about whether to

⁵ See Letter from Brian Benison, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 05-337, 99-68, 07-135 (Aug. 5, 2008), Attachment at 2 (failing to identify any case where the alleged incentive of "carriers to cling to the traditional voice model" resulted in less broadband deployment); Letter from AT&T, CompTIA, CTIA, Global Crossing, The Information Technology Industry Council, National Association of Manufacturers, New Global Telecom, PointOne, Sprint Nextel Corp., The Telecommunications Industry Ass'n, T-Mobile, Verizon, and The VON Coalition to FCC Chairman Kevin J. Martin, WC Docket No. 04-36, CC Docket No. 01-92 (Aug. 6, 2008), at 3 (failing to identify any specific instance when reform to intercarrier compensation spurred "innovation and the deployment of . . . IP services as well as the broadband networks they ride over"); Letter from Ben Scott, Free Press, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92, WC Docket Nos. 05-337 and 06-122 (Oct. 13, 2008), at 5 (claiming that the current intercarrier compensation regime produces a "strong incentive for rural carriers to delay the full transition to the broadband world," but providing no examples of instances where this "strong incentive" led to actual delay).

⁶ Comments of Windstream Communications, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 13-14 (Apr. 17, 2008) (this capital expense projection is based upon offering broadband at speeds ranging from 768 Kbps to 1.5 Mbps).

⁷ *Id.* at 14-15 (such operating costs encompass, but are not limited to, transport fees that Windstream must pay to connect island exchanges to the Internet backbone; additional customer call center staffing required to support broadband products; creation and maintenance of a system that tracks the provision and capacity of each existing Digital Subscriber Line Access Multiplexer; grooming of cable pairs; and installation of jumpers to connect a phone line to broadband equipment).

⁸ See Letter from Eric Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92; WC Docket Nos. 99-68, 05-337, 06-122, 07-135, and 08-152 (Oct. 27, 2008) (establishing that transforming to an all-IP network is not economically viable for the foreseeable future and any such transition would require substantial, additional governmental support above and beyond what carriers currently receive from the Universal Service Fund).

incur these overwhelming costs – other than to make it *more difficult* for a carrier to dedicate scarce funds to further deployment of advanced services.

Second, the Commission’s proposal, as we understand it, seems to adopt the unrealistic belief that the Commission can prevent harms to mid-sized price cap carriers by allowing the carriers to attain additional recovery after making a showing of confiscation. This “opportunity,” as we understand it, is completely inadequate and likely ephemeral. Continued uncertainty would plague the mid-sized price cap carrier business model. By the time the Commission would make any decision about confiscation (even if a carrier could meet such a draconian standard), a mid-sized price cap carrier already would have suffered significant losses – both in terms of short-run decreases in intercarrier compensation revenues and flight of equity investment. This measure would provide too little relief, too late to prevent significant harm to mid-sized price cap carriers and the rural customers they serve.

Third, existing federal Universal Service Fund (“USF”) support offers little consolation to mid-sized price cap carriers. A common misconception is that mid-sized price cap carriers, like Windstream, are funded largely by federal USF support. That simply is not the case. The outdated federal USF mechanisms provide a disproportionately large amount of support to small and mid-sized rate-of-return carriers, but do not provide adequate support to the mid-sized price cap carriers that serve high-cost rural areas of the Nation. Due to averaging of costs and inconsistencies between USF support calculations and rate regulations, the USF system fails to target support directly to the high cost areas where it is actually needed. Consequently, Windstream – with 27 percent of its exchanges comprised of 500 access lines or less – receives less than 1 percent of its total annual revenues from high-cost loop and model support, and less than 3 percent of its revenues from all federal high-cost support combined.

III. The Commission Should Adopt a Measured Approach to Intercarrier Compensation Reform.

Given the complexity of intercarrier compensation reform and the high stakes for rural consumers and carriers, Windstream requests that the Commission put the intercarrier compensation reform proposal out for public comment and formal consideration by the Federal-State Separations and Universal Service Joint Boards and the Federal-State Joint Conference on Advanced Telecommunications Services. Public release of the proposal will allow stakeholders to provide specific information about potential impacts, as well as offer modifications for consideration if appropriate. Moreover, this action would be consistent with the Commission’s practice in other complex proceedings, such as when the Commission recently released its tentative conclusions and rules pertaining to the 700 MHz “D Block” auction.⁹

⁹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Third Further Notice of Proposed Rulemaking, FCC 08-230, WT Docket No. 06-150, PS Docket No. 06-229 (rel. Sept. 25, 2008) (seeking comment on its tentative conclusions and rules designed to create a nationwide interoperable public safety-private partnership through an auction of commercial spectrum (“D Block”)).

If it is serious about enabling the shift to an all-IP network, the Commission must obtain a fact-based understanding of associated costs and benefits, and then craft public policies that will thoughtfully reach that goal. Merely ordering it “to be so” will not produce an all-IP network. Instead, the Commission should initiate a proceeding to gather facts so it can make informed decisions about any such transition.¹⁰ In particular, it could seek input from the states and other experts, such as the Federal-State Joint Board on Universal Service and the Federal-State Joint Conference on Advanced Telecommunications Services.

The Commission’s response to the D.C. Circuit’s remand of *In re Core Communications* should not be used as justification for pushing out ill-considered comprehensive intercarrier compensation reforms. The stakes are too high and the details too important. The Commission can decide the issue of ISP-bound traffic on its own and separately seek comment on the comprehensive proposal before it, or with modifications as proposed below.

Alternatively, if the Commission believes it must take additional steps to address intercarrier compensation reform at this juncture, Windstream offers the following modifications to the proposal under consideration. These concurrent, interrelated modifications would ensure that intercarrier compensation reforms are more fair and balanced. As a result, Windstream likely would support intercarrier compensation reform if its recommended changes were made to the existing plan, as we understand it.

Windstream cautions, however, that the modifications outlined below, to be successful, must be made together and in the time sequence recommended. The intercarrier compensation plan, even with these revisions, would *not* make Windstream and other similarly situated carriers whole as compared to their position under the current intercarrier compensation regime (which Windstream recognizes is eroding). First, Windstream’s interstate access rate reductions to its target CALLS rates resulting from its conversion to price cap regulation would not be recovered via the intercarrier compensation replacement mechanism.¹¹ Second, only 50 percent of the revenue reduction resulting from interstate, intrastate, and reciprocal compensation rate reductions from \$.0065 to \$.0055 would be recovered through the replacement mechanism. Third, the increased subscriber line charges would not be fully recovered, as rate increases are restrained by competition. And to the extent changes are made that will impose further intercarrier compensation revenue losses, these modifications could place mid-sized price cap carriers in further financial jeopardy.

Specifically Windstream proposes the following *concurrent, interrelated* modifications (which are outlined in further detail in the attached Appendix) to the intercarrier compensation plan currently before the Commission:

¹⁰ Key questions to be asked are as follows: What steps are needed from a technological perspective to achieve the goal? How much will those changes cost? Would a transformation to all IP networks require regulation of the Internet backbone and/or transport arrangements to reach the backbone? What impact will such a transformation have on public safety? How would consumers benefit, and at what price?

¹¹ Windstream is required to reduce its interstate access rates to its CALLS targets, but under this proposal the transition to the lower rate would be accomplished in three years, rather than the longer transition provided under the CALLS rules.

- **First**, the Commission should transition each carrier’s intrastate rates to its interstate rate levels by study area over several years.
- **Second**, the Commission must provide mid-sized price cap carriers, like Windstream, access to a recovery mechanism for recovery of lost intercarrier compensation revenues, offset in part by the subscriber line charge (“SLC”) increases proposed in the plan (i.e., \$1.50 for residential and single line business and \$2.30 for multi-line business). A wide array of parties are on the record supporting the need for such a mechanism.¹² Funds from this recovery mechanism, which should apply after imputation of the rate benchmark and SLC increases, could be limited to operating and capital expenditures associated with support, maintenance, enhancements, and expansion of broadband offerings. This measure would replace the proposal to tie the future receipt of high-cost universal service support to a 100 percent broadband deployment commitment.
- **Third**, the Commission should issue a Further Notice of Proposed Rulemaking (“FNPRM”) to seek comment on next steps and the framework for additional intercarrier compensation reform. The Commission should seek comment on, among many other items: whether to establish one unitary rate for all intercarrier compensation; unified rates by carrier, state, or track; the methodology for setting rates and establishing “additional cost” under Section 252(d)(2); and the proper role of state commissions, the Federal-State Separations and Universal Service Joint Boards, and the Federal-State Joint Conference on Advanced Telecommunications Services.
- **Fourth**, the Commission should preserve the status quo with respect to ISP-bound traffic and make it clear that VoIP traffic must continue to pay access and reciprocal compensation charges until the Commission issues a final order resulting from the FNPRM.

¹² See, e.g., Letter from Larry Cohen, Communications Workers of America, President, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 3 (urging the Commission to “establish a supplementary explicit universal service fund available to mid-size carriers for broadband build-out”); Letter from Brian Mefford, Connected Nation, Chairman and CEO, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 2 (urging the Commission to establish universal service recovery mechanisms that “should be available to all carriers of last resort, regardless of company size, structure or regulatory classification”); Letter from Walter McCormick, USTelecom, President, to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (Oct. 10, 2008), at 5, 7, 8 (declaring that “establishment of a credible and compensatory ARM is an essential element of comprehensive intercarrier compensation reform”); Letter from Curt Stamp, Independent Telephone and Telecommunications Alliance (ITTA), President, to Secretary Dortch, Secretary, FCC, CC Docket No 01-92 (Sept. 19, 2008), at 5 (recommending that mid-sized carriers be able to use an Alternative Recovery Mechanism); Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) (proposing a plan that included a recovery mechanism, which could be used by mid-sized carriers) (“Missoula Plan Ex Parte Letter”).

Please contact me if you have any questions regarding this proposal.

Respectfully submitted,

/s/ Eric N. Einhorn

Eric N. Einhorn

cc: Dan Gonzalez
Amy Bender
Greg Orlando
Scott Deutchman
Nick Alexander
Scott Bergmann
Dana Shaffer
Don Stockdale
Marcus Maher
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Appendix

Minimum Necessary Steps to Modify Proposal

- Years 1-3 -- Reduce terminating interstate, intrastate, and reciprocal compensation access rates for price cap carriers, phased in equal increments annually, to each carrier's interstate CALLS target by study area pursuant to 47 C.F.R. § 61.3(qq) (i.e., \$0.0095, \$0.0065, or \$0.0055).
- Years 4-5 -- Reduce terminating interstate, intrastate, and reciprocal compensation access rates for price cap carriers, phased in equal increments annually, to the lowest CALLS target pursuant to 47 C.F.R. § 61.3(qq)(1) (i.e., \$0.0055) and unify any higher reciprocal compensation rates to that level.
- Establish an Intercarrier Compensation Replacement Fund -- Provides a revenue replacement opportunity for revenue losses due to mandated rate reductions.
 - Available to non-RBOC price cap carriers and Fairpoint.
 - For Years 1-3, equals cumulative revenue loss due to intrastate and reciprocal compensation rate reductions, assuming maximum SLC increases.
 - For Years 4-5, equals 50% of the total reduction (interstate, intrastate, and reciprocal compensation) to \$0.0055 plus the cumulative total from Years 1-3.
 - Each year the amounts received from the Fund would be indexed by the carrier's previous year's reported percentage of subscriber line loss.
 - Could limit use of funds to support for operating and capital expenditures associated with support, maintenance, enhancements, and expansion of broadband offerings.
 - Offset recovery from the Fund with imputed SLC increases.
 - Establish a rate benchmark so as not to overburden consumers in states that have already rate rebalanced.
 - This measure would replace the proposal to tie the future receipt of high-cost universal service support to a 100 percent broadband deployment commitment.
- Clarify treatment of VoIP traffic during transition, as follows:
 - VoIP to PSTN calls: Local (by telephone number) calls pay reciprocal compensation. Appropriate interstate and intrastate rates due on non-local calls (by telephone number) until interstate and intrastate rates are equal.
 - PSTN to VoIP calls: Local calls pay reciprocal compensation. Originating and terminating access due on non-local calls. Terminating access rate declines as provided in the transition plan. Originating access remains until end of transition.
- Issue a FNPRM seeking comment on steps for additional comprehensive intercarrier compensation reform during Years 5-10. The Commission should seek comment on, among many other items, whether to establish one unitary rate for all intercarrier compensation; unified rates by carrier, state, or track; the methodology for setting rates and establishing "additional cost" under Section 252(d)(2); and the proper role of state

Commissions; the Federal-State Separations and Universal Service Joint Boards; and the Federal-State Joint Conference on Advanced Telecommunications Services.

- Refer to the Federal-State Separations and Universal Service Joint Boards relevant issues, such as: whether to set a rate benchmark to constrain SLC increases in high rate states; whether a mechanism is needed to replace access or reciprocal compensation revenues during the next stage; and the impact of any changes or transitions on the separations process.
- Preserve the status quo with respect to ISP-bound traffic, pending completion of the FNPRM referenced above.

**JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS, JONATHAN S. ADELSTEIN, DEBORAH
TAYLOR TATE AND ROBERT M. MCDOWELL**

Re: *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36

Today's decision responds directly to the mandamus from the D.C. Circuit Court of Appeals regarding Core Communications, Inc. The item sets forth the Commission's legal justification for the rules it adopted in 2001 governing intercarrier compensation for telecommunications traffic bound for Internet service providers. It also preserves the ability to move towards a more unified intercarrier compensation regime.

We also issue a Further Notice seeking comment on specific proposals to reform the intercarrier compensation and universal service systems. While we do not pre-judge any of the proposals set forth therein, we do believe that there is a tentative but growing measure of consensus on a number of issues, including: moving intrastate access rates to interstate access levels over a reasonable period of time; not unduly burdening consumers with increases in their rates untethered to reductions in access charges; addressing phantom traffic and traffic stimulation; implementing an alternative cost recovery mechanism in certain circumstances; eliminating the identical support rule and moving over time towards support based on a company's own costs; emphasizing the importance of broadband to the future of universal service; and clarifying the implementation of the Alaska Native regions and tribal lands exception to the CETC cap adopted on May 1, 2008, and the need for special consideration for such areas. We would appreciate stakeholders attention to these issues of concern and consideration of whether modifications along these lines to the attached proposals are warranted. This Further Notice reflects our commitment to comprehensive reform of the intercarrier compensation and universal service systems in an expedited fashion.

Finally, the Commission today has completed a proceeding to consider the recommendations of the Federal-State Joint Board on Universal Service. We appreciate all of the valuable input that the Board has provided the Commission. We however choose not to implement the Joint Board's recommendations at this time. We thank the Board members for their tireless efforts and look forward to obtaining their valuable input on an on-going basis.

For the foregoing reasons, we are pleased to approve today's Report & Order and Further Notice of Proposed Rulemaking.

MARKET RESPONSE TO PROPOSED INTERCARRIER COMPENSATION REFORMS

“We believe the [rural telco] stocks are discounting a very negative scenario, with valuations at record [low] levels. The RLECs are down an average of 29% this month versus 8.5% for the sector. . . . [I]nvestors are concerned about the negative impact of a November 4 FCC vote on Intercarrier Compensation and Universal Service [C]urrent valuation levels are discounting a very negative outlook for both the macro and regulatory environment”

Morgan Stanley, *Telecom Services: RLECs – Waiting and Worrying* (Oct. 30, 2008).

“Many of the large-cap RLEC names have been under significant pressure over the past week to ten days, as the FCC's November 4th meeting, and a potential decision regarding intercarrier compensation reform is days away. . . . At current levels, CenturyTel (CTL, \$23.96, Buy) has fallen 44%, Windstream (WIN, \$6.52, Buy) has fallen 46% and Frontier (FTR, \$7.10, Buy) has fallen 30% since mid-September, versus a 21% decline for the broader market, and an approximate 10% decline for both AT&T and Verizon.”

Stifel Nicolaus, *RLECs Oversold; Reform Potential Looming, But Draconian Downside Unlikely* (Oct. 31, 2008)